IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5759 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NIRMALA J JHALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5759 of 1999
MR JAL UNWALA WITH MS NIRALI B MUNSHI, Advocates for Petitioner
MR SN SHELAT, Advocate General with
MR JB PARDIWALA, Advocate, for Respondents

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 25/08/2004

JUDGEMENT

(Per : HON'BLE MR.JUSTICE AKIL KURESHI)

The petitioner who was a judicial officer has by way of the present petition challenged the notification dated 11.12.98 issued by the Government of Gujarat, by which the petitioner has been ordered to be compulsorily retired from service with effect from the date of the notification.

2. Brief facts leading to the present petition can be noted at the outset. The petitioner was working as second Joint Civil Judge (SD), Ahmedabad Rural from 10.6.91 to 18.10.92. With effect from 19.10.92, the petitioner was posted as Chief Judicial Magistrate, Ahmedabad Rural and continued to work on the said post till 25.11.93. For having committed certain misconduct, pending departmental proceedings, the petitioner was placed under suspension by order dated 21.1.94. On 6.8.94, a chargesheet came to be issued against the petitioner containing in all 12 charges against her. Shri M.C.Patel, the then Additional Principal Judge, City Civil and Sessions Court, Ahmedabad was appointed as the Inquiry Officer to conduct inquiry against the petitioner, pursuant to the said chargesheet dated 6th August, 1994.

3. Upon conclusion of the oral inquiry, the Inquiry Officer concluded that charges Nos.3 to 12 against the petitioner are not proved, the findings with which the High Court on its administrative side agreed to and we may, therefore, ignore the details of those charges for the purpose of present petition.

4. Charges Nos.1 and 2 levelled against the petitioner read as follows:

"That while you were working as 2nd Jt. Civil Judge (SD), Ahmedabad (Rural) at Mirzapur for the period from 10.6.91 to 19.10.92, and Chief Judicial Magistrate, Ahmedabad for the period from 19.10.92 to 25.11.93 :

1. That in CBI case No.5/91, you demanded illegal gratification of Rs.20,000/-, and you agreed to accept the amount by the way of installments of Rs.5000/- each from the accused Mr.G.G.Jani, through his advocate Mr.C.B.Gajjar, for showing favour to the accused.

2. One person who is known as 'Mama' amongst the litigants used to come with you from your residence and to return with you and to sit in your Chamber and to collect money from the litigants on your behalf, and thereby you indulged in the corrupt practice."

During the course of the inquiry, several witnesses were examined before the Inquiry Officer. Number of documents were also produced to prove the charges levelled against the petitioner. The Inquiry Officer submitted his report in which it was concluded that the charge article 1 against the petitioner stands proved. The Inquiry Officer came to the following conclusion :

"As a result of the above discussion, I come to the conclusion that Miss Jhala demanded or agreed to accept illegal gratification through advocate Shri C.B.Gajjar for doing favour to Shri Jani at her meeting with Shri Gajjar in her chamber on 17.8.93. The charge no.1 is answered accordingly."

With respect to charge article No.2 levelled against the petitioner, the Inquiry Officer concluded that a person known as 'Mama' used to come and sit in the chamber of Miss Jhala, however, there is no evidence on record that this person used to collect money from the litigants. The exact findings of the Inquiry Officer in this regard were as follows:-

"I see no reason to disbelieve the evidence of Shri Rajnikant S. Shah that one person known as 'Mama' used to come and sit the Chamber of Miss Jhala. He has said in cross-examination that several persons are known as Mama in staff and he does not know the person known as Mama personally. That may be so but the fact remains that a person known as Mama used to come and sit in the chamber of Miss Jhala. However, there is no evidence on the record that the person used to collect money from the litigants on behalf of the litigants. The charge No.2 is therefore answered accordingly."

The report of the Inquiry Officer was supplied to the petitioner by the High Court of Gujarat along with a show cause notice dated 12.12.97 communicating the tentative decision of the High Court to the petitioner indicating

that the High Court, prima facie, finds that this is a fit case to recommend issuance of notice to the delinquent calling upon her to show cause as to why penalty of dismissal from service should not be imposed upon her for the charges proved against her. In response to the said show cause notice dated 12.12.97, the petitioner gave a detailed representation dated 5.5.1998.

5. After considering the Inquiry Officer's report, the evidence on record and the representation of the petitioner in response to the show cause notice dated 12.12.97, the High Court of Gujarat on administrative side by its recommendation dated October 12, 1998 recommended compulsory retirement of the petitioner from service. In the said recommendation, it was observed that the petitioner as a Judicial Officer is required to maintain highest standard of integrity and honesty. It was observed that the evidence on record would show that the delinquent had demanded a sum of Rs.20,000/- to show favour to the accused who was facing prosecution for offences punishable under section 409, 467 and 471 of the Indian Penal Code and the delinquent having failed to maintain the standard expected of a Judicial Officer, has committed grave misconduct and her conduct was unbecoming of a judicial Officer. Considering, however, her long service, the High Court as mentioned earlier, recommended that she be compulsorily retired from service.

6. The said recommendations of the High Court on its administrative side were accepted by the State Government and by resolution dated 11th December 1998, it was resolved to accept the said recommendations of the High Court and to compulsorily retire the petitioner from service. Pursuant to the said resolution, a notification dated 11th December 1998 came to be issued in the name of Governor of Gujarat compulsorily retiring the petitioner from service with effect from the date of the notification. The petitioner has challenged, in the present petition, the said resolution dated 11th December 1998 as well as the notification dated 11th December 1998 by which she is ordered to be compulsorily retired from service.

7. Though several grounds have been raised in the petition with respect to the applicability of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971 to the petitioner and the consequential conduct of the inquiry against her in terms of the said Rules, the learned advocate for the petitioner during the course of the argument has stated that in view of the settled legal position emerging from the Full Bench decision of this

Court in R.M.Gajjar v. State reported in 18 GLR 738, the petitioner is not pressing those grounds and is accordingly not questioning the legality of the departmental inquiry conducted against the petitioner. The petitioner has, thus, confined her challenge to the findings arrived at by the Inquiry Officer during the course of the departmental inquiry as accepted by the Disciplinary Authority.

8. To understand the controversy better, the exact nature of allegations against the petitioner with respect to charge article 1, in brief, can be recalled at this stage. It is alleged against the petitioner that at the relevant time, when she was discharging duties as Chief Judicial Magistrate, Ahmedabad (Rural), a criminal case being CBI Case No.5/91 was pending before the court of the petitioner in which one Shri Gautam G. Jani, an officer of the LIC under suspension was the accused. Shri Jani had engaged advocate Shri P.K.Pancholi, to defend him in the said case. Shri Pancholi who was normally practicing in the High Court and who was also related to the accused Shri Jani was finding it difficult to remain present in the criminal proceedings. On 13.8.93, two witnesses on behalf of the prosecution were present. One other advocate, Shri C.B.Gajjar, was instructed by Shri Pancholi to appear on behalf of Shri Jani and on 13th August 1993, Shri Gajjar obtained an adjournment in the matter on the ground that he has to present his VP and prepare the case. The hearing of the case was, therefore, adjourned to 20th August 1993. It is alleged that on 17th August 1993, Shri Jani was called by Shri Gajjar outside the chamber of the petitioner at about 4.30 p.m. and at about 5 'O clock in the evening of 17.8.93, while Shri Jani was standing outside the chamber of the petitioner, Shri Gajjar went inside the chamber when the petitioner was alone. On coming out from the chamber after 15 to 20 minutes, Shri Gajjar told Shri Jani that the petitioner is willing to do the work and the judgment would be given in his favour, but he will have to pay Rs.20,000/= before 20th August 1993 i.e. the next date of hearing. On Shri Jani telling Shri Gajjar that he did not have the funds to pay such a large amount as he is under suspension and requesting for installments or time, Shri Gajjar once again went into the chamber of the petitioner and after coming out told Shri Jani that the case would proceed further in his favour only if he makes an arrangement for the first instalment of Rs.5,000/- in the evening of 27.8.93 or in the morning of 28.8.93 and that he would be obtaining an adjournment on 20.8.93 and get a short date. It is stated that since Shri Jani was unable to raise the

necessary amount, he approached the Prosecutor Shri Pandey appearing for the CBI and under his advise lodged a written complaint to the CBI on 19.8.93 narrating the said incident. This in essence is the underlying allegation against the petitioner with respect to charge article 1.

9. To establish article charge No.1, the prosecution has examined several witnesses. Salient features of depositions of these witnesses examined during the course of the inquiry can be noted at this stage.

10. Shri Gautam Jani, accused in CBI Case No.5/91, who had acted as whistle-blower in the present case was examined as witness No.1 during the course of the inquiry. Said Shri Gautam Jani had given a written complaint to Shri P.P.Pandey, S.P., CBI on 19.8.93 alleging, inter alia, that an amount of Rs.20,000/- was demanded by the petitioner through one advocate Shri C.B.Gajjar with respect to his pending case being CBI Case No.5/91 which was pending before the petitioner. The said complaint dated 19.8.93 was exhibited at Ex.48 during the course of the departmental inquiry. Said Shri Jani had also given his statement to the Vigilance Officer of the High Court of Gujarat on 20th September, 1993. The said statement dated 20th September 1993 is also exhibited at Ex.51 in the inquiry proceedings and Shri Jani has stated in his deposition that the contents of the said statements are true. In essence, therefore, the evidence of Shri Gautam Jani before the Inquiry officer comprised not only of his oral deposition, i.e. examination-in-chief and the cross-examination, but would also include his written complaint dated 19.8.93 given to the CBI and his statement dated 20th September 1993 recorded by the Vigilance Officer of the High Court. In his written complaint dated 19.8.93, Shri Jani has, inter alia, stated that his case being CBI Case No.5/91 is pending before the Chief Judicial Magistrate, Mirzapur, Ahmedabad. He has stated that the concerned Chief Judicial Magistrate is giving adjournments for only a week or 15 days. Shri Jani has further stated that his advocate is unable to remain present and that therefore the court gets angry with him. Being fed up by the situation, Shri Jani states that he approached his advocate Shri Pancholi and requested him to relieve from the mental torture. Shri Jani was, therefore, introduced to one advocate Shri Chandrakant B. Gajjar who was practicing in Gheekanta court and he was told that Shri Gajjar and the Magistrate have personal relations and he will get the work done. Shri Jani had met Shri Gajjar in Mirzapur Court on 13.8.93. Shri Jani has also stated

that though Shri Gajjar was not legally representing him, but to show that he has good relation with the Magistrate, he secured adjournment in the case. Shri Jani was thereafter instructed by Shri Gajjar to meet him on Tuesday, i.e. 17th August 1993 in the evening at 4.30 in Mirzapur Court near the chamber of the Chief Judicial Magistrate. Shri Jani accordingly reached the said place and at about 5.00 p.m. when the Magistrate was alone in her chamber Shri Gajjar had gone to meet her and after discussion for about 15 to 20 minutes, he had come out and stated that the Magistrate is ready to do the work and the Magistrate will give judgment in his favour and even if the CBI goes further in appeal, then also, there will be no difficulty as the judgment will be sound. But he (Shri Jani) will have to pay an amount of Rs.20,000/before the date of adjournment i.e. 20th August 1993. Shri Jani however told Shri Gajjar that he cannot arrange for so much money since he was under suspension and requested to get some time or installments and that he would, under no circumstances, be able to give the said amount on 20th August 1993. He requested that he may be given time upto 28th August 1993 and also be given installments. Upon this request, Shri Gajjar had again gone to meet the Magistrate and told him thereafter, that by way of first instalment, he has to arrange for Rs.5,000/= by 27th August 1993 evening or 28th August 1993 morning and only then, the case will be decided in his favour. He also stated that on 20th August, 1993, they will ask for time and will take a short adjournment and by the next adjournment after paying the money, the case will be conducted. Shri Jani has further stated that for adjournment on 20th August 1993, a false application for adjournment was given on 17.8.93 in the name of advocate Shri Pancholi stating the reason that Shri Pancholi's sister's mother-in-law had expired and it was told to him (Shri Jani) that since talk has already taken place with the Magistrate, upon the presentation of the application, immediately an adjournment will be granted. In the said application, it is stated that for the said corruption, steps may be taken against the concerned Magistrate. The application for adjournment dated 20th August 1993 in original was annexed with the complaint.

11. In his statement before the Vigilance Officer given by Shri Jani, he has reiterated what he has stated in his written complaint to the CBI, of course, with certain minor insignificant discrepancies. For example, in this statement for the first time he has tried to suggest that when Shri Gajjar entered the chamber of the petitioner on second occasion on 17.8.1993, he positioned

himself outside the chamber in such a way that he could hear the conversation between the petitioner and Shri Gajjar. However, he has repeated the entire incident as narrated in his complaint dated 19.8.93. He has further stated that since he could not raise the necessary amount, he had gone to the CBI office on 19.8.93 and met the Prosecutor Shri Pandey and told him that on the next day, he will be admitting the charge and requested that since it is his first offence, Shri Pandey may get him the benefit of probation. Shri Pandey, however, refused the request, but inquired as to what had happened that made him change his mind when so far he was in the mood of fighting out the case. Shri Jani, therefore, informed him about the demand of money by Miss Jhala and told him that since he could not arrange for money and therefore cannot pay the amount, he was sure to be convicted. Upon this conversation, the Prosecutor Shri Pandey took Shri Jani to the S.P. Shri P.P.Pandey and Shri Jani has told him about the entire incident. Shri P.P.Pandey, therefore, asked him to give an application giving full details and accordingly, he gave the said application to the CBI on 19.8.93. It is further stated by Shri Jani in his statement before the Vigilance Officer that Shri P.P.Pandey told him that on 20th August 1993 he will send one person as a panch whom Shri Jani should introduce to Shri Gajjar as his man, who in turn will report so that the CBI can verify that the application given by Shri Jani is correct. Accordingly on 20th August 1993, CBI Inspector had brought one person to Mirzapur Court and according to the plan, that person was to be introduced to advocate Shri Gajjar as the elder brother of Shri Jani. It is further stated by Shri Jani that he met Shri Gajjar in the Gheekanta court during the recess time along with the said panch witness and introduced him as his cousin brother and told him to tell the entire conversation to his brother so that he can make an arrangement for money. They, therefore, went with Shri Gajjar to a nearby restaurant called Yamuna Restaurant on Gheekanta road. Shri Gajjar repeated the same conversation which had taken place earlier in the presence of the panch. The panch witness had requested for reducing the amount, but Shri Gajjar stated that the amount demanded was quite low and cannot be reduced further and only if they can raise the amount, he will be able to save the accused and not otherwise. Upon which the panch asked Shri Gajjar as to where and when the money will be paid to Miss Jhala to which Shri Gajjar had stated that Rs.5,000/= is to be paid at her residence and no other person can come there, but there will be no difficulty if Shri Jani goes along with him. They had ordered three "Thumps Up" in the restaurant and the CBI

Inspector who was sitting at some distance had asked for a plate of cutlets. On the conclusion of the talk, they had got up and when Shri Jani had gone to the counter for payment of the bill, the person sitting in the counter pointed out that cutlet was ordered by the other person. Advocate Shri Gajjar, therefore, got suspicious as to why bill was paid on behalf of some other person and asked for an explanation. Shri Jani, therefore, gave explanation, but Shri Gajjar got suspicious that there was certainly something wrong and immediately left the place. Shri Jani, therefore went to meet Shri Gajjar at his place and asked him as to why he had left in a hurry, on which Shri Gajjar inquired about the said person. Shri Jani told him that Shri Jitendrasinh was his friend. But advocate Shri Gajjar was not convinced and Shri Jani was told to collect his brief since he was not interested to work for him any more. It is also stated by Shri Jani in the said statement that on 24.8.93 and 27.8.93, he had received threats from some unknown persons for which also he had complained to the CBI in writing. He has further stated that on 10.9.93, when he was staying at Vijapur, one person with a darkish complexion and stout build had come to meet him and told him that he is 'Mama' and that he should file affidavit that Miss Jhala has not demanded money and that Shri Gajjar has demanded the same. He was promised that he would be acquitted and he would also be paid an amount of Rs.25,000/-. This offer was declined by Shri Jani.

12. In his deposition recorded before the Inquiry Officer at Ex.47, Shri Gautam Jani narrated the said events as mentioned in his complaint before the CBI as well as recorded in the statement before the Vigilance Officer. Barring minor discrepancies, he has stuck to his story on all material particulars. Shri Jani was cross-examined by advocate Shri P.R.Agarwal appearing for the petitioner. However, no major discrepancies have been brought out by the defence in the cross-examination. It is important to note at this stage that though Shri Jani has stated on as many as three occasions, i.e. in his written complaint before the CBI, in his statement before the Vigilance Officer and in his deposition before the Inquiry Officer to the effect that on 17th August 1993, advocate Shri Gajjar had gone in the chamber of the petitioner and met her twice and demanded an amount of Rs.20,000/= from Shri Jani for his acquittal in the criminal case pending before the petitioner and had also discussed the issue of giving installments to Shri Jani for the said payment after having come out of the chamber of the petitioner on the second occasion, there is absolutely no cross-examination on this important aspect

of the matter by the petitioner of this witness. The principal allegation of the prosecution that on 17th August 1993 at about 5.00 p.m. Shri Gajjar had met the petitioner in her chamber for 15 to 20 minutes and came out and conveyed to Shri Jani that the petitioner had demanded an amount of Rs.20,000/= for acquitting Shri Jani in the said criminal case, thereafter re-entered the chamber of the petitioner and after having come out on the second occasion told him that the Magistrate had agreed to accept the amount in installments, has gone totally unchallenged in the deposition of Jani. In the cross-examination, however, Shri Jani could not state with certainty as to when and where did he receive the threats. He has also admitted that he had never met a person known as 'Mama' at any time other when he received the threat. He also admitted that he cannot recognise Shri Mama if he saw him. He, in his cross-examination, also agreed to the suggestion that Shri Gajjar may have had a hand in the incident in which he (Shri Jani) received threats. He was shown the map showing the chamber of the petitioner and surroundings and he admitted that he did not hear the conversation between Shri Gajjar and the petitioner. Shri Jani, however, denied the suggestion that he had filed the complaint before the CBI to ensure that his case is transferred from the court of the petitioner. It is pertinent to note that in the cross-examination, no suggestion is made to this witness suggesting any ill-will between him and the petitioner.

13. Advocate Shri Gajjar was examined during the course of inquiry at Ex.68. He had stated that his statement was recorded by the Vigilance Officer on 29.9.93. He stated that the contents therein are correct and the statement was exhibited at Ex.69. Thus the evidence of Shri Gajjar comprises of his statement before the Vigilance Officer given on 29.9.93 as well as his oral evidence during the course of inquiry. In his statement before the Vigilance Officer, Shri Gajjar has stated that he knew advocate Shri P.K.Pancholi. On 13.8.93 Shri Gautam Jani had approached him at about 11 O' clock in the compound of the court of Metropolitan Magistrate and stated that he was sent by advocate Shri Pancholi and that he has to appear for Shri Jani in CBI Case No.5/91 pending before the Chief Metropolitan Magistrate (Rural) Ahmedabad. According to Shri Gajjar's statement, Shri Jani had also handed over an application for adjournment prepared by Shri Pancholi. Shri Gajjar has further stated that at about 12.30 in the afternoon when he reached the court, Shri Pancholi had also arrived there. Shri Pancholi stood outside the court since if he

had entered the court, he would have been compelled to proceed with the case. Shri Gajjar requested for time which was initially refused, but, eventually, the matter was adjourned to 20th August 1993. He thereafter stated that he met Shri Pancholi in the evening on the same day when Shri Pancholi told him to tell Shri Gautam Jani that Rs.20,000/= were to be paid to Magistrate Miss Jhala. Shri Gajjar did not make any further enquiry about it since he thought he would get two to three thousand rupees by way of fees. He has further stated that on 20th August 1993, Shri Gautam Jani had come to his table at 11 O' clock and told him that his brother will come in the afternoon with whom he can talk about the money since he was going to pay the amount. Shri Gajjar has stated that at that time, he told him that Rs.20,000/= shall have to be paid to Miss Jhala. Thereafter, Shri Jani went to Mirzapur court. It is further stated that at 2.30 in the afternoon Shri Jani came with one tall bald gentleman (panch witness Goswami) at his table in the compound of Metropolitan Court and told him that the judge was to come in the afternoon. They suggested that they should go to the canteen and talk. They went to the canteen, but Shri Jani then said that they can go to a quiet hotel and that they therefore went to the Yamuna restaurant. There, Shri Jani introduced the person who had come with him as his elder brother and said that he was to arrange for money. Shri Gajjar thereupon spoke that Rs.20,000/= shall have to be paid to Miss Jhala. Mr.Gajjar further stated that they asked him as to how the amount is to be paid. They also said that Rs.5,000/= will be given by next Thursday or within one week and rest will be given a week thereafter. They had also asked whether the work will be done or not, upon which Shri Gajjar has stated that the work will be done and that there will be no cheating. Shri Jani had asked whether at the time of paying the money, he could accompany, upon which Shri Gajjar said that she (petitioner) will not accept money in that manner and money shall have to be paid to him only. At the time of payment of bill at the Yamuna restaurant, it was paid by Shri Jani and the accompanying person who was tall and bald had put his pouch under the table and after opening the chain made some noise at which Shri Gajjar had got suspicious and they had gone out. Thereafter, they had come to the court at his table where Shri Gajjar asked Shri Jani as to what is there in the pouch of the said person. At that time, he was told that the person is doing the business of calculator and he has brought the calculator for changing the same in the market. Shri Gajjar had, however, got suspicious and got the pouch opened and saw a small tape recorder inside. They had,

thereafter, gone out and when they were standing at the pan shop, one person on scooter had come and taken away the pouch containing the tape recorder from the bald gentleman and speeded away on his scooter. Shri Jani and the tall-bald person had a quarrel between them. In the evening, Shri Gajjar had gone to the office of Shri Pancholi and informed him about the conversation having been taped. Shri Pancholi, however, told him not to worry and Shri Gajjar had thereafter gone home.

14. The said statement of Shri Gajjar was more or less repeated by him in the examination-in-chief before the Inquiry Officer. In the cross-examination, he has stated that after going in the Court of Miss Jhala on 13.8.93, in the morning, he has never gone thereafter. He has also stated that he has never talked about money nor has he talked about the case of Shri Gautam Jani with the petitioner. He has stated that on 13.8.93, he obtained adjournment on the ground that he was a junior advocate and had to file his V.P. and prepare for the case. He had also stated that from the name plate outside the chamber of the judge, he was aware that she was unmarried.

15. From the testimony of Shri Gajjar, it can be seen that though he had admitted the conversation with Shri Jani which took place on 20th August 1993 and admitted having demanded amount of Rs.20,000/= in the name of the petitioner, he denied that the petitioner had ever asked for the said amount. He had also denied having met the petitioner in her chamber at any point of time. In short, Shri Gajjar had not supported the version of Shri Jani with respect to the incidents of 17th August, 1993.

16. Statement of advocate Shri P.K.Pancholi was recorded by the Inquiry Officer at Ex.77. Shri Pancholi admitted having given his statement before the Vigilance Officer on 30th September 1993 and admitted the contents thereof and the same was exhibited at Ex.78. In his deposition before the Vigilance Officer Shri P.K.Pancholi has stated that he knew Shri Gautam Jani and he is his relative. He further stated that he had put his vakalatnama in CBI case No.5/91 and Shri Jani used to come to him and procure adjournment applications. The case was before Chief Judicial Magistrate Shri R.G.Bhatt. Thereafter, in his place Miss Jhala had come as the Chief Judicial Magistrate and she was not giving adjournments. Therefore, he had once gone to her Court and conducted cross-examination of the witness in the beginning of the month of August. He had directed Shri Jani to advocate Shri Gajjar who was familiar to him. He has stated that

he has not talked to Gajjar in person about this case nor given any instructions regarding fees in the matter. He has further stated that about a week back Shri Gajjar told him that Shri Jani and one person who came with him sat with him in a hotel near the court where their conversation was taped and Shri Gajjar had told him that an inquiry was going on in the High Court regarding the said incident and he may probably be called, to which Shri Pancholi told him that if need be he will go. He has also stated that he had called Shri Jani to meet him, but he did not come.

17. In his examination-in-chief before the Inquiry Officer, he has stated that he had put his vakalatnama for Shri Jani in the CBI case against him. In the beginning Shri Bhatt was the Chief Judicial Magistrate. Thereafter, Miss Jhala had come in the said post. He has stated that he entrusted the case to Shri Gajjar since he was not in a position to attend the case every day and Shri Gajjar was looking after the same. Gautambhai Jani was also meeting, Shri Gajjar directly and taking adjournments. In his cross-examination, Shri Pancholi has stated that as Gautambhai was his relative, no fees were fixed nor any amount taken. He had also not fixed any fees with Shri Gajjar. He stated that he used to entrust his criminal cases to Shri Gajjar and that Shri Gajjar had informed him about the incident of Yamuna hotel. He had tried to contact Shri Jani, but did not meet him.

18. From the deposition of Shri Pancholi, it can be seen that he claims complete ignorance about the demand of money by Shri Gajjar or by the petitioner as suggested by Shri Jani.

19. Shri Jethagir Goswami who was the "panch" who had accompanied Shri Gautam Jani on 20th August 1993 was examined at Ex.94, during the course of the inquiry. He had given his statement to the Vigilance Officer on 8.9.93, contents of which were admitted by him and the same was exhibited at Ex.96. He had also submitted a report of the incident on 20th August 1993 contents of which he proved and the report was exhibited at Ex.95. Thus the evidence of said Shri Goswami consists of his report dated 20th August 1993 and his statement before the Vigilance Officer dated 8.9.93 besides his oral evidence before the Inquiry Officer.

20. In his report dated 20th August, 1993, Shri Goswami has narrated the entire incident and stated, inter alia, that he had accompanied Shri Jani to the

court of Chief Judicial Magistrate, Mirzapur, Ahmedabad; that after introduction as cousin brother of Shri Jani to Shri Gajjar, three of them went to Yamuna restaurant where, he states that they i.e. Shri Gajjar and Shri Jani discussed about the case which was under trial in the court of Chief Judicial Magistrate, Mirzapur, Ahmedabad. Shri Gajjar said that Madam was very strict but he will help in the case as he was close to her and Shri Gajjar told Shri Jani : "you arrange for Rs.20,000/= and I will get it finalised in your favour". Shri Jani therefore, inquired whether once the amount is paid the case will be decided in his favour, to which Shri Gajjar replied that it was his duty to get it finalised through Madam. He has further stated that Shri Jani requested Shri Gajjar to reduce some amount which Shri Gajjar declined and said that the amount was the minimum and he cannot reduce it. Regarding the mode of payment, he has stated that Shri Gajjar told that Madam was not accepting money directly and he will collect it from them and will hand it over to Miss Jhala at her residence. At the time of accepting money by her husband, she will not be present and she will go back inside her room. Shri Gajjar had also asked Shri Jani to make an arrangement of Rs.5,000/= by way of the first instalment and to hand over the same to him on 27th August 1993 so that it can be handed over to her on 28.8.93 (which was a non-working Saturday). He has further stated that at about 2.45 p.m. they finished the "Thumps Up" which was ordered by Shri Jani and Shri Gajjar stood up from his chair and moved over to the door of the restaurant where he and Shri Jani saw the CBI Officer in the restaurant sitting far away on another table. Shri Jani, therefore, asked the person at the counter to collect the bill for him also which was also heard by Shri Gajjar and therefore he became suspicious. He inquired about the fourth person and hence Shri Jani had stated that the person was his friend and therefore he made the payment. Shri Gajjar was not convinced and he had some doubt about the fourth person. He had collected the bill of Rs.27/= for which Shri Jani had made the payment.

21. In his statement before the Vigilance Officer, Shri Goswami has repeated the same version. In his oral evidence before the Inquiry Officer, he has once again narrated the same incident of 20th August 1993. In the said statement, however, for the first time, he has stated that he was carrying a tape-recorder given to him by the CBI and he was to give the same to Shri Jani, but since Shri Jani was sitting opposite to him, the pouch remained with him. He had pressed the button of the

tape, but he was not aware whether the same was correctly pressed or not. He has also said that after coming out of the restaurant, Shri Gajjar had asked as to what was there inside the pouch and he had stated that it was a camera and then he was asked to show it, but he refused. After about 5 minutes of quarrel, Shri Jitendrasinh had come there and taken away the pouch. In his cross-examination, the said witness has admitted that in his statement before the Vigilance Officer, he was not asked about the tape recorder.

22. Witness Jitendrasinh Vishwanathsinh, who was the CBI Inspector, was examined at Ex.99 before the Inquiry Officer. His statement before the Vigilance Officer was exhibited at Ex.100. He has stated in his statement before the Vigilance Officer that on 19.8.93, S.P. Shri Pandey had called him and handed over one complaint given by Shri Jani and instructed him to verify the correctness of the complaint with the help of one independent witness. He has also stated that Shri Goswami was deputed as a witness and after appraising Shri Goswami of the facts, Shri Goswami and Shri Jani left for the court of the Chief Judicial Magistrate and he followed them. He has also narrated that in the afternoon, Shri Gajjar along with Shri Jani and Shri Goswami went to Yamuna Restaurant and he also went inside the restaurant and sat on the last table. After about 20 to 25 minutes, all of them finished their talk and cold drinks and started to come out. He also narrated the incident of bill for his cutlet being paid by Shri Jani. He, thereafter, went to the office and gave his report dated 20th August 1993 which was submitted along with the bill issued by the Yamuna Restaurant. He also stated that on 2.9.93, Shri Jani had come to his office as he wanted to give an application to the S.P. Shri Pandey regarding threats being given to him.

23. In his deposition before the Inquiry Officer, the said witness has substantially repeated the same version. In the cross-examination, he has stated that he did not give any tape-recorder to anybody and if Shri Goswami had so stated, he did not agree with the same. He has stated that from the place he was sitting in the Yamuna Restaurant, he was not within a hearing distance, which was about 20 ft., but he could see all the three clearly. He has stated that pursuant to the complaint dated 19.8.93 given by Shri Jani, he was not asked to carry out any formal investigation or inquiry but was told only to verify the same.

24. Regarding charge article 2 several witnesses have

been examined by the Department. Shri Pratapji Motiji who was one of the litigants was examined. He has, however, not supported the departmental version in his deposition.

25. Witness Manubhai Bhikhabhai Vanand, who was a relative of Pratapji also had not supported the Department in his deposition before the Inquiry Officer.

26. One Shri Sureshbhai Manubhai Dave, who was working as Clerk in the court of Joint Civil Judge (SD) was examined, who has stated that he was Clerk in the court of 2nd Joint Civil Judge (SD) with effect from 1.1.92 when Miss Jhala was the Presiding Officer and that he was with her till she was working in the court of Senior Division. He has stated that many litigants and advocates used to come to meet Miss Jhala. One of them was known as Mama who used to come frequently. He had a Bullet (Motor-cycle) and he used to come in the morning and leave in the evening. He used to sit for a while in the chamber and go out for some time. He had also stated that when Mama was sitting in the chamber, sometimes, the cases were also being conducted. His statement recorded by the Vigilance Officer was exhibited at Ex.80. In his cross-examination, the said witness agreed that in Mirzapur Court there is one bearded gentleman by the name of Mr.Dave who is also known as 'Mama'. He did not know whether any other person is also known as Mama. He has denied the suggestion that Miss Jhala had admonished him on one occasion since he had not completed the rozkam of the previous proceedings or that he was censured since he had not completed the work for two months. He has denied that he was not doing the work as instructed by Miss Jhala. He has denied that Miss Jhala used to frequently scold him due to which he was upset and therefore he used to instigate litigants against her. He denied that since he was scolded by Miss Jhala and was insulted by her, he has given this statement falsely.

27. One Shri Rajnikant Somchand Shah who was working as Senior Clerk in the court of 2nd Joint Civil Judge (SD) from August 1991 till December 1992 was also examined to establish charge article 2 against the petitioner. In his deposition, the said witness has stated that the petitioner used to come on scooter with one gentleman who used to sit in the chamber of Miss Jhala for some time and thereafter he used to go away and people used to know him by the name of "Mama". In his cross-examination, he has denied the suggestion that he has never seen the petitioner coming on scooter or that she was always coming alone on the scooter. He has also

stated that he had given his statement before the Vigilance Officer and the same was also exhibited at Ex.116 in which also, he had given a similar statement.

28. The Department has also produced several documents during the inquiry including the original complaint given by Shri Jani to the CBI on 19.8.93 (Ex.48), adjournment application dated 20th August 1993 annexed with the complaint dated 19.8.93 (Ex.49), bill issued by Yamuna restaurant dated 20th August 1993 (Ex.50) as well as statements of several witnesses recorded by the Vigilance Officer during the conduct of the preliminary inquiry.

29. The petitioner herself had deposed before the Inquiry Officer at Ex.109. The sketch of the location of the chamber of the petitioner and the surroundings was also produced. The petitioner did not examine any defence witness during the course of the inquiry.

30. In her evidence before the Inquiry Officer, the petitioner has stated that she was discharging her duties as the 2nd Joint Civil Judge (SD) from 10.6.91 to 19.10.92 and from 19.10.92 to 25.11.93 she was discharging duties as Chief Judicial Magistrate. She has stated that during the said period, she did not know any litigant by the name 'Mama' nor was she commuting between her residence and the court with any such person named Mama. She has further stated that no litigant by the name of Mama had ever come to her chamber or was sitting in her chamber because she did not know any such litigant known as Mama and she is not aware of any person known as Mama collecting money in her name. She has indicated that between her chamber and the lobby outside, there is a stenographer's room and both have doors with door-closers. She, therefore, stated that if somebody is standing outside in the lobby or near the wall, then it is not possible to hear the conversation taking place inside the chamber of the Magistrate. She has also stated that on 13.8.93, advocate Shri Gajjar had come to her and taken adjournment on the ground that he is a junior and he has to present his VP and prepare the case. She had, therefore, considering the request of Shri Gajjar granted adjournment for one week. She has also stated that on that day (i.e. 13.8.93), Shri Pancholi had come along with Shri Gajjar and Jani to the door of the court room and she had seen him, but Shri Pancholi did not enter the court and, instead, had sent Shri Gajjar inside the court. She has stated that she has never discussed the CBI Case No.5/91 or any other case

with Shri Gajjar in her chamber or at any other place. She has also stated that she has never discussed about collecting money for the said case or any other case. She has also stated that except on 13.8.93 when Shri Gajjar came to her court for taking adjournment, she has never met him either in her chamber or at any other place either on 17.8.93 or on any other date. He has stated that she is unmarried and in her name-plate her name is written as "Kumari Nirmala J. Jhala" in Gujarati. She has stated that in the past, frequently she had to censure Shri Dave for his lapse in work. She has also stated that during recess, she used to take tea with other Judges in the tea-club and during the recess also, she hardly gets any time to sit in the chamber. She has also stated that in her chamber, she never used to do any judicial work.

31. Based on the above evidence led during the course of inquiry, the Inquiry Officer was pleased to prepare his report, in which appreciating the evidence on record, the Inquiry Officer made the following observations.

"33. However, the gravest and clinching circumstance against Miss Jhala is the fact that Shri Gajjar called Shri Jani to meet him outside her chamber at 4.45 pm on 17.8.93 and demanded Rs.20,000/= after a meeting with her in her chamber no doubt both Miss Jhala and Shri Gajjar had denied this allegation. However, the tenor of Shri Gajjar's statement before the vigilance officer shows that the meeting in the Yamuna Hotel on 20.8.93 was in pursuance of the previous talk between Shri Jani and Shri Gajjar. On 13.8.93 Shri Gajjar had left the Court after getting the case adjourned and there was no talk about any payment at that time. The meeting, therefore, took place after 13.8.93 and before 19.8.93 when Shri Jani went to the CBI office and made the complaint. In the circumstances, there is no reason to disbelieve Shri Jani's account of what happened on 17.8.93 given in his complaint dated 19.8.93.

34. In the circumstances, the assertion of Miss Jhala and Shri Gajjar that there was no meeting between them cannot be accepted as true. When the denial of the meeting is found not to be true the only inference that can be drawn is that Miss Jhala and Shri Gajjar had a talk about the case and that Miss Jhala had made a demand for illegal gratification. Otherwise, there is no

reason for them to deny the fact that there was a meeting. It is true that Shri Jani was not present in the chamber when the alleged talk took place between Miss Jhala and Gajjar. Miss Jhala has produced a sketch (Exh.110) of the court room and the chamber to show that Shri Jani could not have heard the talk when, according to him, he was at first standing in the lobby. It may be that Shri Jani's claim to have been standing near the chamber so as to be able to hear the talk is a subsequent improvement but the fact that there was a meeting between Miss Jhala and Shri Gajjar cannot be doubted and in the absence of any explanation of the reason for the meeting the only inference that can be drawn is that Miss Jhala demanded illegal gratification and Shri Gajjar conveyed the demand to Shri Jani. This inference is strengthened by the fact that on his own say Shri Gajjar gave an assurance to Shri Jani and Shri Gajjar in the Yamuna Hotel that the work would be done and there would be no cheating. Both Shri Jani and Shri Goswami said in their statements before the Vigilance Officer that Shri Gajjar could accompany him to the residence of Miss Jhala though she would not accept payment in person. According to Shri Goswami, Shri Gajjar said that the dealing is made by her husband. It is said that Miss Jhala is unmarried and hence there was no question of her husband being present. But it is possible that the payment was to be accepted by some other person when Shri Gajjar loosely described as Miss Jhala's husband. Shri Jani was a relative of Shri Pancholi who used to give criminal cases to Shri Gajjar. Shri Gajjar therefore would not give a false assurance to Shri Jani and this shows that Shri Gajjar made the demand in pursuance of his meeting with Miss Jhala. Shri Gajjar stated in his statement before the Vigilance Officer that he expected to receive Rs.2000 to 3000/- as fees. Then who was to get the rest of the amount? Obviously Miss Jhala because it is inconceivable that Shri Pancholi, being a relative of Shri Jani, would think of receiving any amount immediately from Shri Jani particularly when he was no longer to appear in his case. Hence, Shri Gajjar's explanation that he had been told by Shri Pancholi to demand Rs.20,000/- in the name of the Magistrate is not believable.

35. It may be that Gajjar was to retain part of the amount but there is no doubt that Miss Jhala agreed to accept illegal gratification for doing favour to Shri Jani and Shri Gajjar's demand was in pursuance of the meeting with Miss Jhala in her chamber on 17.8.93.

36. As for Shri Jani's allegation in his statement before Vigilance Officer that he had received threats from two unknown persons on 24.8.93 and 27.8.93. It is not possible to say that Miss Jhala was responsible for the threats because Shri Jani has admitted in his cross-examination that after the incident in Yamuna Hotel he had an altercation with Shri Gajjar and Shri Gajjar had used strong language and Shri Gajjar might have had a hand in the incident of the threats. As far as allegation that Shri Jani was visited by a person known as Mama at his residence in Vijapur in September 1993, it has come out in Shri Jani's cross-examination that they had no place to stay at Vijapur after 1986 when his father retired and came to live with him in Mehsana. In his oral evidence he could not remember in which month and year and at which place he had received the threat.

37. As a result of the above discussion, I come to the conclusion that Miss Jhala demanded or agreed to accept illegal gratification through advocate Shri C.G.Gajjar for doing favour to Shri Jani at her meeting with Shri Gajjar in her chamber on 17.8.93. The charge no.1 is answered accordingly."

32. With respect to charge article 2, the Inquiry Officer, as narrated earlier, came to the conclusion that the evidence of Shri Rajnikant Shah cannot be discarded that one person known as Mama used to come and sit in the chamber of the petitioner, but found that there is no evidence on record that the said person used to collect money from the litigants on behalf of the petitioner.

33. The report of the Inquiry Officer was supplied to the petitioner along with the tentative decision of the High Court calling upon the petitioner to show cause as to why penalty of dismissal should not be imposed upon her. In response to the said show cause notice, the petitioner also made a detailed representation and Shri P.M.Thakkar, Senior Advocate, was also heard on behalf of

the petitioner.

34. After considering the evidence on record, oral as well as documentary, Inquiry Officer's report, the petitioner's representation and the submissions made by the counsel for the petitioner, the High Court was pleased to concur with the findings of the Inquiry Officer with respect to charges Nos.1 and 2 and was pleased to recommend that the petitioner be compulsorily retired from service. It was observed in the said recommendation that "... The question which arises for consideration is as to why the evidence given by Mr.Jani should be disbelieved. The High Court finds that the delinquent has not alleged anything against this witness. Mr.Jani had no personal grudge against the delinquent. His say that Mr.Gajjar had told him to procure an amount of Rs.20,000/= which was to be given as bribe to the delinquent inspires confidence. If Mr.Gajjar had not asked this witness to procure a sum of Rs.20,000/= to be given as bribe to the delinquent, he would not have referred this very amount in his complaint which was lodged with the CBI on August 19, 1993". It was further observed that :

> "..... In the light of the evidence of Mr.Jani, which is apply corroboration by his complaint dated August 19,1993, as well as other documents on record, such as original application drafted by Mr.Gajjar, contents of report of Mr.Goswami, which is at Exh.95 on record etc. there is no manner of doubt that Advocate Shri Gajjar had asked Mr.Jani to make arrangement for a sum of Rs.20,000/= to the paid to the delinquent as bribe. The next question which arises for consideration is whether the delinquent had demanded bribe of Rs.20,000/= from Advocate Mr.Gajjar. To prove the case of demand, the department relied upon the deposition of Mr.Jani. A careful reading of the deposition of Mr.Jani indicates that he has not asserted or in his statement that the had over-heard the demand of bribe made by the delinquent from Advocate Mr.Gajjar. However, some improvements were made by him in this regard when his evidence was recorded before the Inquiry Officer. Even if those improvements are ignored his assertion that on 17/08/1993 Mr.Gajjar had seen the delinquent in her chamber twice and Mr.Gajjar had informed him to make arrangements for a sum of Rs.20,000/as the same was demanded as bribe by the delinquent deserves acceptance for the

following reasons.

Mr.Gajjar in his deposition has categorically stated that he had never met the delinquent during time between August 13, 1993 to August 20, 1993. Similarly, the delinquent has also taken up the defence that Advocate Mr.Gajjar had never seen her in her chamber between August 13, 1993, and August 20, 1993. In light of the evidence, it would be relevant to decide whether the assertion made by Mr.Jani that Advocate Mr.Gajjar had seen the delinquent twice on August 17, 1993, deserves acceptance or not. In our view, the say of witness Mr.Jani that Advocate Mr.Gajjar had seen twice the delinquent in her chamber on August 17, 1993 deserves to be accepted because if, Mr.Gajjar had not seen the delinquent in her chamber on August 17, 1993, there was no earthly reason for Mr.Jani to refer to the said fact in his complaint which was lodged on August 19, 1993, nor there was any reason for Mr.Gajjar to give in advance original adjournment application dated 20/08/1993 to Mr.Jani on 17/08/1993 with instructions present the case before the delinquent on August 20, 1993. If Mr.Gajjar had not asked Mr.Jani to make arrangement for a sum of Rs.20,000/= to be paid as bribe to the delinquent, Mr.Jani could not have mentioned the said fact in his complaint dated 19.08.1993. In fact, Mr.Jani had gone to Senior Public Prosecutor of C.B.I. for help as he was not able to pay the bribe amount and but for persuasion of C.B.I. Officer, he would not have lodged any complaint against the delinquent at all. The Inquiry Officer has rightly concluded that Mr.Gajjar had met the delinquent in her chamber twice on August 17, 1993, and that finding being just and proper is upheld hereby."

The evidence of Shri Gajjar was also taken into consideration and it was found that the assertion made by the delinquent and Mr.Gajjar that there was no meeting between them cannot be accepted as true. It was observed that :

"Apart from evidence of Mr.Jani, which is supported by the documents on record, the question then arises is as to for what purpose Mr.Gajjar had seen the delinquent in her chamber on August 17, 1993. The irresistible and unpleasant inference to be drawn would be that

Mr.Gajjar had met the delinquent in her chamber with reference to C.B.I.case pending against Mr.Jani and the delinquent and demanded a sum of Rs.20,000/= as bribe from Mr.Gajjar. The question posed for the High Court's consideration is decided bearing in mind that the standard of proof required in a departmental inquiry is that of preponderance of probability and not proof beyond reasonable doubt as in a criminal prosecution and that neither the technical Rules and Evidence Act nor of proof of a fact or evidence as defined therein apply to department proceedings."

The suggestion that Mr.Jani wanted to delay the hearing of the case and had, therefore, made false allegations was also considered and rejected on the ground that Mr.Jani was under suspension since 1991 and therefore it cannot be accepted that he was interested in delaying the case pending against him.

35. With respect to the second charge also, basing reliance on the evidence of Shri R.S.Shah (Ex.115) and other documents on record, the findings of the Inquiry Officer were accepted. The Inquiry Officer's conclusion that though the charge that 'Mama' used to come with the petitioner and sit in her chamber is proved, the charge of such a person collecting money from litigants in her name is not proved was also agreed to.

36. In view of this background, the learned counsel appearing for parties have made detailed submissions before us.

37. The learned advocate Shri Unwala appearing for the petitioner has argued the matter at length and has taken us through the entire record of the case and has also extensively read the report of the Inquiry Officer and High Court's recommendations besides the depositions of the witnesses. He has also referred to the documents produced during the course of inquiry.

38. In challenging the departmental inquiry, he contends that :

(i) This is a case of no evidence because the charge against the petitioner is that of demanding illegal gratification through advocate Shri C.B.Gajjar and agreeing to accept illegal gratification which is not proved even through the evidence of Shri Jani, Shri Gajjar or any

other witness;

(ii) That even believing the evidence of Shri Jani in toto, the case of demand of Rs.20,000/= cannot be believed against the petitioner since Shri Jani has personally not heard the petitioner demanding the said amount;

(iii) Proving of charge against an judicial officer has serious and lasting repercussions and therefore, to infer that the charges are proved is not permissible on surmises and conjectures.

39. In support of his submissions, learned advocate for the petitioner relies upon a decision reported in (1999) 7 SCC 739 (Yoginath D. Badge v. State of Maharashtra) wherein it is observed that under Article 235 of the Constitution, the High Court has a duty to protect the officers of the sub-ordinate judiciary from unscrupulous litigants and lawyers. He also relies on the observations of the Hon'ble Supreme Court in the said decision wherein it is observed that "the law is well settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court as also to this Court to interfere in the matter".

40. Learned advocate for the petitioner has also relied upon a decision reported in (2002) 7 SCC 142 (Sher Bahadur v. Union of India & ors.) wherein in para 7, it is observed that "it may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law".

41. The learned advocate for the petitioner has also placed reliance on a decision reported in (1999) 2 SCC 10 (Kuldeep Singh v. Commissioner of Police and others), wherein it is observed that, "the power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the

superior authority". It is also observed in the said decision that, "normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny".

42. Learned advocate for the petitioner has also relied on a decision reported in AIR 1972 SC 2535 (State of Assam v. Mohan Chandra) in support of his contention that during the departmental inquiry, charges cannot be sustained on mere conjectures in absence of any evidence.

43. Learned Advocate General appearing with Shri J.B.Pardiwala for the respondents has sought to support the decision of compulsorily retiring the petitioner. He has submitted that the departmental inquiry has been conducted in consonance with the principles of natural justice and the procedure laid down under the Gujarat Civil Services (Discipline and Appeal) Rules and no submission has been made on behalf of the petitioner pointing out any violation of principles of natural justice or any statutory rules and therefore, he submits that :

(i) This is not an appeal and therefore the Court cannot examine the case as an appellate court and try to reappreciate the evidence on record;

(ii) If there is some evidence which has been accepted by the Disciplinary Authority which may reasonably support the conclusions reached during the course of inquiry, the court will not interfere with such conclusions;

(iii) It is not open for this Court to interfere with the findings arrived at during the domestic inquiry by the competent authority merely because two views are possible and the Court finds the other view more attractive. He submits that the only exception to this rule is that the court can interfere if it finds that there is no evidence and that therefore the findings are perverse or some relevant evidence is overlooked wherein also technical rules of evidence cannot be applied.

(iv) Adequacy or sufficiency of evidence is not in the realm of judicial review.

44. Learned counsel relying upon a decision reported in AIR 1997 SC 2286 (High Court of Judicature at Bombay

v. Udaysingh) contended that the scope of judicial review is extremely narrow in examining the legality of the decision of the competent authority in a departmental inquiry and since this is not a case of no evidence, interference by the High Court is not called for. He has also relied upon a decision reported in AIR 1997 SC 2631 (High Court of Judicature at Bombay v. Shirish Kumar R. Patil) to highlight the need to root out corruption from judiciary. He has also relied on a decision of the Hon'ble Supreme Court reported in AIR 2000 SC 22 (High Court of Judicature at Bombay v. Shashikant S. Patil) for the same purpose. We will advert to these decisions at some length shortly.

45. Before we proceed to examine the legality of the order under challenge on the basis of material on record, it would be useful to take note of some of the leading decisions of the Hon'ble Supreme Court, including those cited by the learned counsel for the parties on the scope of judicial review in matters of departmental inquiries.

46. In (1972) 4 SCC 618 (Union of India v. Sardar Bahadur), the Hon'ble Supreme Court held that a finding cannot be characterised as perverse or unsupported by any relevant material if it is a reasonable inference from proved facts. It was also held that a disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt. Para 15 of the said decision reads as follows:

> "15. A finding cannot be characterised as perverse or unsupported by any relevant materials if it is a reasonable inference from proved facts. Now what are the proved facts : Nand Kumar as representative of M/s.Ram Sarup Mam Chand and M/s. Mam Chand and Company of Calcutta filed five applications for licences to set up steel re-rolling mills on 14th June, 1956. On 25th June 1956, a cheque drawn in favour of P.S.Sundaram was given to the respondent by Nand Kumar for Rs.2,500; the cheque was endorsed and the amount credited in the account of the respondent. When the respondent borrowed the amount in question from Nand Kumar, he was not working in the Industries Act Section. Nand Kumar knew that the respondent was working in the Steel & Cement Section of the Ministry and the application for the grant of licences for setting

up the steel plant re-rolling mills would go to that Section. Even if the applications were to be dealt with at the initial stage by the Industries Act Section the respondent at least was expected to know that in due course the section in which he was working had to deal with the same. This is borne out by the fact that in July 1956 copies of the applications were actually sent to the Steel & Cement Section where the respondent was working. If he, therefore, borrowed money from Nand Kumar a few days earlier it seems rather clear that he placed himself under pecuniary obligation to a person who was likely to have official dealings with him. The words "likely to have official dealings" take within their ambit the possibility of future dealings between the officer concerned and the person from whom he borrowed money. A disciplinary proceeding is not a criminal trial. The standard proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that Nand Kumar was a person likely to have official dealings with the respondent was one which a reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court (See State of Andhra Pradesh v. S.Sree Rama Rao). No doubt there was no separate finding on the question whether Nand Kumar was a person likely to have official dealings with the respondent by the Inquiring Officer or the President. But we think that such a finding was implied when they said that charge No.3 has been proved. The only question was whether the proved facts of the case would warrant such an inference. Tested in the light of the standard of proof necessary to enter a finding of this nature, we are satisfied that on the material facts proved the inference and the implied finding that Nand Kumar was a person likely to have official dealings with the

respondent were reasonable." (emphasise supplied)

In AIR 1989 SC 1185 (Union of India v. Parma Nanda), it was held that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. Para 25 and 27 of the said decision can be reproduced here:

"25. The view taken in Bidyabhushan case has been repeatedly affirmed and reiterated in Railway Board v. Niranjan Singh, [1969] 3 SCR 548 at 552; O.P. Gupta case AIR 1970 SC 679 and Union of India v. Sardar Bahadur, [1972] 2 SCR 218. Any doubts as to the incapacity of the Court to review the merits of the penalty must vanish when we read the remarks of Mathew, J., in Sardar Bahadur's case (at 225) (of SCR): (at pp.630-31 of Lab IC):

"A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that Nand Kumar was a person likely to have official dealings, with the respondent was one which reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. Where there are some relevant materials which the authority has accepted and which materials may reason ably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Art. 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court. "

The learned Judge also said (at 227) (of SCR) :
(at p. 631 of Lab IC):

"Now it is settled by the decision of this Court in State of Orissa v. Bidyabhushan Mohapatra,

that if the order of a punishing authority can be supported on any finding as to substantial misdemeanour for which the punishment can be imposed, it is not for the Court to consider whether the charge proved alone would have weighed with the authority in imposing the punishment. The Court is not concerned to decide whether the punishment imposed, provided it is justified by the rules, is appropriate having regard to the misdemeanour established."

26. xxxxx

"27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter." (emphasise supplied).

In the decision reported in AIR 1997 SC 2286, which was also a case of departmental inquiry against a judicial officer, the Hon'ble Supreme Court discussed the earlier decisions and observed that the disciplinary proceedings are not criminal trials. Therefore, the scope of inquiry is entirely different from that of criminal trial in which the charge is required to be proved beyond doubt, but in case of disciplinary inquiry, the technical rules

of evidence have no application and the doctrine of proof beyond doubt has no application. Preponderance of probabilities and some material on record would be necessary to reach to a conclusion whether or not the delinquent has committed misconduct. The following portion of the judgment needs to be noted.

"8. Having regard to the respective contentions, the question that arises for consideration is: whether the view taken by the Division Bench is sustainable in law? As regards the nature of the judicial review, it is not necessary to trace the entire case law. A Bench of three Judges of this court has considered its scope in recent judgment in B.C.Chaturvedi v. Union of India, (1995) 6 SCC 749: (1995 AIR SCW 4374) in which the entire case law was summed up in paragraphs 12, 14 and 15 thus:

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent office or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation

of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

"14. In Union of India v. S.L. Abbas [(1993) 4 SCC 357]: (1993 AIR SCW 1753) when the order of transfer was interfered with by the Tribunal, this Court held that the Tribunal was not an appellate authority which could substitute its own judgment to that bona fide order of transfer. The Tribunal could not, in such circumstances, interfere with orders of transfer of a Government servant. In Administrator of Dadra & Nagar Haveli v. H.P. Vora [(1993) Supp. 1 SCC 551],(1992 AIR SCW 2830) it was held that the Administrative Tribunal was not an appellate authority and it could not substitute the role of authorities to clear the efficiency bar of a public servant. Recently, in State bank of India v. Samarendra Kishore Endow (1994) 2 SCC 537: 1994 AIR SCW 1465, a Bench of this Court to which two of us (B.P. Jeevan Reddy & B.L. Hansaria, JJ.) were members, considered the order of the Tribunal, which quashed the charges as based on no evidence, went in detail into the question as to whether the Tribunal had power to appreciate the evidence while exercising power of judicial review and held that a Tribunal could not appreciate the evidence and substitute its own conclusion to that of the disciplinary authority. It would, therefore, be clear that the Tribunal cannot embark upon appreciation of evidence to substitute its own findings of fact to that of a disciplinary/appellate authority.

15. It is, therefore, difficult to go into the question whether the appellant was in possession of property disproportionate to the known source of his income. The findings of the disciplinary authority and that of Inquiry Officer are based on evidence collected during the inquiry. They reached the findings that the appellant was in possession of Rs.30,000/- in excess of his satisfactorily accounted for assets from his known source of income. The alleged gifts to his

wife as stridhana and to his children on their birthdays were disbelieved. It is within the exclusive domain of the disciplinary authority to reach that conclusion. There is evidence in that behalf."

9. Law on the nature of the imposition of the penalties, it has been summed up on paragraph 18 thus:

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

10. Accordingly, the order of the Tribunal in reversing the imposition of the penalty was set aside. In another judgment in State of Tamil Nadu v. S.Subramaniam, (1996) 7 SCC 509 : (1996 AIR SCW 1272), this Court has considered the scope of the power of judicial review vis-a-vis reappreciation of evidence and concluded as under (paras 3 and 4 of AIR):

"The Tribunal appreciated the evidence of the complainant and according to it the evidence of the complainant was discrepant and held that the appellant had not satisfactorily proved that the respondent had demanded and accepted illegal gratification. The Tribunal trenched upon appreciation of evidence of the complainant, did not rely on it to prove the above charges. On that basis, it set aside the order of removal. Thus this appeal by special leave.

The only question is: whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved. The Tribunal is not a court of appeal. The power of judicial review of the High Court under Article 226 of the constitution of India was taken away by the power under Article 323A and invested the same on the Tribunal by Central Administrative Tribunal Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the court or tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to re-appreciate the evidence and would come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. This is consistent view of this Court vide B.C. Chaturvedi vs. Union of India (1995) 6 SCC 749 : (1995 AIR SCW 4374, State of Tamil Nadu vs. T.V. Venugopalan [(1994) 6 SCC 302 : 1994 AIR SCW 3947] (SCC para 7), Union of India vs. Upendra Singh [(1994) 3 SCC 357: 1994 AIR SCW 2777] [SCC para 6], Government of Tamil Nadu vs. A. Rajapandian [(1995) 1 SCC 216 : AIR 1995 SC 561] (SCC para 4) and B.C. Chaturvedi v. Union of India, [(1995) 6 SCC 749 at pp. 759-60] : (1995 AIR SCW 4374). In view of the settled legal

position, the Tribunal has committed serious error of law in appreciation of the evidence and in coming to its own conclusion that the charge had not been proved. Thus we hold that the view of the Tribunal is ex facie illegal. The order is accordingly set aside. OA/TP/WP stand dismissed."

"11. These two judgments squarely cover the controversy in this case.

12. It is seen that the evidence came to be recorded pursuant to the complaint made by Smt.Kundanben, defendant in the suit for eviction. It is true that due to time lag between the date of the complaint and the date of recording of evidence in 1992 by the Enquiry Officer, there are bound to be some discrepancies in evidence. But the Disciplinary proceedings are not a criminal trial. Therefore, the scope of enquiry is entirely different from that of criminal trial in which the charge is required to be proved beyond doubt. But in the case of disciplinary enquiry, the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct. The test laid down by various judgments of this Court is to see whether there is evidence on record to reach the conclusion that the delinquent has committed misconduct and whether as a reasonable man, in the circumstances, would be justified in reaching that conclusion." (emphasise supplied)

In the decision of the Hon'ble Supreme Court reported in AIR 1997 SC 2631, Hon'ble Mr.Justice K. Ramaswamy had made the following observations:

"The lymph nodes (cancerous cells) of corruption constantly keep creeping into the vital veins of the judiciary and the need to stem it out by judicial surgery lies on the judiciary itself by its self-imposed or corrective measures or disciplinary action under the doctrine of control enshrined in Articles 235, 124(6) of the Constitution. It would, therefore, be necessary

that there should be constant vigil by the High Court concerned on its subordinate judiciary and self-introspection."

However, Hon'ble Mr Justice D.P.Wadhwa who was also party to the said Bench deciding the appeal did not concur with the above observations.

47. The observations made in the decision of the Hon'ble Supreme Court in AIR 1997 SC 2631 reproduced above, were however taken note of by the Hon'ble Supreme Court in a subsequent decision reported in AIR 2000 SC 22 and in para 23, it is observed as follows:

"23. The Judges, at whatever level may be, represent the State and its authority, unlike the bureaucracy or the members of the other service. Judicial service is not merely an employment nor the Judges merely employees. They exercise sovereign judicial power. They are holders of public offices of great trust and responsibility. If a judicial officer "tips the scales of justice its rippling effect would be disastrous and deleterious". Dishonest judicial personage is an oxymoron. We wish to quote the following observations made by Ramaswamy, J. in High Court of Judicature at Bombay v. Shirishkumar Rangrao Patil, (1997) 6 SCC 339: (1997 AIR SCW 2592 : AIR 1997 SC 2631):

"The lymph nodes (cancerous cells) of corruption constantly keep creeping into the vital veins of the judiciary and the need to stem it out by judicial surgery lies on the judiciary itself by its self-imposed or corrective measures or disciplinary action under the doctrine of control enshrined in Articles 235, 124(6) of the Constitution. It would, therefore, be necessary that there should be constant vigil by the High Court concerned on its subordinate judiciary and self-introspection."

48. In (1999) 7 SCC 739 (Yoginath D.Bagde v. State of Maharashtra), the Hon'ble Supreme Court has observed that "the law is well settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court as also to this Court to interfere in the matter".

49. From the above decisions, following legal principles can be culled out:

(i) A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt.

(ii) The High Court cannot sit in appeal over the decision of the domestic tribunal. Therefore, where there are some relevant materials, which the authority has accepted and which material may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 of the Constitution of India to review the materials and to arrive at an independent finding on the materials.

(iii) If the inquiry is properly held, the question of adequacy or reliability of evidence cannot be gone into by the High Court. High Court cannot interfere with the penalty if the conclusion of the competent authority is based on evidence, even if some of it is found to be irrelevant or extraneous to the matter.

(iv) In case of disciplinary inquiry, technical rules of evidence have no application.

(v) The only consideration that court has in its judicial review is to consider whether the conclusion is based on evidence and supports the findings or whether the conclusion is based on no evidence. To put it differently, the High Court can interfere if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonably prudent person would have ever reached.

50. Conscious of the above judicial principles and conscious also of the duty of the High Court to protect the Judicial Officers of sub-ordinate courts from unscrupulous litigants and to protect its honest judicial officers against ill-conceived or motivated complaints, we have examined the matter on hand. We have heard the learned advocates appearing for the parties at considerable length. We have also perused the evidence oral as well as documentary produced on record, report of the Inquiry Officer, show cause notice issued to the

petitioner along with which Inquiry Officer's report was supplied to her, the petitioner's representation in response to the same, recommendations of the High Court and the orders passed which are impugned in this petition.

51. From the evidence on record, it can be seen that Shri Gautam Jani had in his deposition, clearly stated that for his pending CBI case before the petitioner, his advocate Shri Pancholi had directed him to another advocate Shri Gajjar. It has also come on record that on 13.8.93, when CBI Case No.5/91 of Shri Gautam Jani was fixed for evidence before the petitioner, Shri Jani was present in the Court. Shri Gajjar was also present there and adjournment was sought by Shri Gajjar on the ground that he has to submit his VP and prepare the case. This fact is also clearly emerging from the evidence of advocate Shri Gajjar. In fact, the petitioner also does not deny this aspect of the matter. In fact, in her deposition before the Inquiry Officer, it has come on record that she was also aware that advocate Shri Pancholi had also come to the Court on that day, but had not entered her Court. It is further stated by Shri Jani in his deposition that he was thereafter called by Shri Gajjar in the court on 17.8.93 at about 4.30 in the evening. Accordingly, Shri Jani had gone to the court on the said day where Shri Gajjar had also come. It is further stated by Shri Jani that at about 5 'O clock in the evening of 17.8.93, he had waited outside the chamber of the petitioner and Shri Gajjar had gone inside when the petitioner was in the chamber and had come out after 15 minutes and said that the petitioner is demanding Rs.20,000/= for deciding the case in favour of Shri Jani. On Shri Jani's protesting that the amount was too large, Shri Gajjar had once again gone inside the petitioner's chamber and after coming out, he said that the amount shall have to be paid, but it was agreed to accept the same in installments. The fact that Shri Jani and Shri Gajjar had a meeting outside the chamber of the petitioner on 17.8.93 at about 5 'O clock in the evening and that Shri Gajjar had gone inside the chamber of the petitioner twice and demanded money on her behalf from Shri Jani to decide the case in his favour has been believed by the Inquiry Officer as well as by the High Court in its recommendations. There are number of reasons why the said conclusions appear to be eminently just. At no point of time, the petitioner has alleged any animosity or ill-will between her and Shri Jani. Neither in the cross-examination of Shri Jani nor in her deposition before the Inquiry Officer, the petitioner has even remotely suggested any ill-will between them so as

to falsely implicate the petitioner.

52. We have also recorded earlier that on this important aspect of the matter, namely, Shri Gajjar and Shri Jani had assembled outside the chamber of the petitioner on 17.8.93 and Shri Gajjar had entered the chamber of the petitioner twice when the petitioner was in her chamber and demanded an amount of Rs.20,000/= on behalf of the petitioner, there is absolutely no cross-examination of Shri Jani by the petitioner. Lack of challenge to this most crucial element of the evidence fully justifies the findings of the competent authority that the incident of 17.8.93 as narrated by Shri Jani is proved beyond reasonable doubt. The fact that the said statement of Shri Jani with respect to meeting of 17.8.93 is not supported by Mr.Gajjar in his deposition is of no consequence. We find that Shri Jani had filed a written complaint before the CBI on 19.8.93 in which the entire incident was narrated. He had also stated that being unable to raise the funds, he had approached the prosecutor appearing for the CBI and requested for ensuring that he gets the benefits of probation, upon which the prosecutor had tried to gather the facts and advised him to file a written complaint to CBI. We also find that pursuant to this complaint, the CBI had sent panch witness Shri Goswami along with Shri Jani for a meeting on 20th August 1993 when the case was once again to come up on board before the petitioner. The fact that a meeting between Shri Jani, Shri Goswami and Shri Gajjar did actually take place is conclusively proved through the evidence on record. This has come on the deposition of Shri Jani. This is also borne out from the deposition of Shri Goswami. Shri Gajjar has also in his deposition admitted the meeting of 20th August 1993 in the Yamuna restaurant. Shri Goswami in his report to the CBI, has also narrated the events of 20th August 1993 in the Yamuna restaurant. As a corroborative piece of evidence, we also have the deposition of the CBI Inspector, Shri Jitendrasing. Bill of Yamuna restaurant dated 20.8.1993 has also been produced at Ex.50. There is, therefore, no manner of doubt that on 20th August, 1993, Shri Gajjar in presence of Shri Goswami once again talked about the amount of Rs.20,000/- to be paid to the petitioner by way of illegal gratification for deciding the case in favour of Shri Jani. If this was the first time the said issue had cropped up between Shri Gajjar and Shri Jani and there was no previous talk about the amount to be paid, how is it possible that in his complaint to the CBI on 19.8.93, Shri Jani had specifically indicated the sum of Rs.20,000/= and had also indicated the discussion on the money being paid in installments of Rs.5,000/= ? The

complete parallel between the version of Shri Jani in his written complaint before the CBI dated 19.8.93 and the version put forth by Shri Gajjar on 20th August 1993 in Yamuna restaurant before Shri Jani in presence of Shri Goswami leaves no scope for doubt that prior to 20th August 1993 also, Shri Gajjar had demanded Rs.20,000/= from Shri Jani on behalf of the petitioner for deciding the case in favour of Shri Jani.

53. In view of the above discussion, we find that there is ample evidence on record to establish that Shri Jani and Shri Gajjar had a meeting on 17th August 1993, outside the chamber of the petitioner when Shri Gajjar went inside her chamber twice when she was in her chamber and came out and conveyed to Shri Jani that he would have to pay an amount of Rs.20,000/= to the petitioner for getting his case decided in his favour. When this is so, it was the duty of the petitioner to explain the said circumstance. The petitioner instead of satisfactorily explaining Shri Gajjar entering her chamber twice on 17.8.93 has completely disowned and denied any such occurrence. Though she has stated in her deposition that generally she had a heavy board to handle and that therefore she never could get time to retire in her chamber before 5.30 p.m., the petitioner has not made any specific averments that on 17.8.93 she was not inside her chamber at 5 'O clock in the evening nor has the petitioner examined any witness to show that she was not in the chamber on the said day at 5 'O clock. Being court premises, surely there would have been number of witnesses readily available such as, her Bench Clerk, her Stenographer, etc. who would be sitting outside her chamber, her Peon and number of advocates who could vouch for the fact that the petitioner was not inside her chamber at 5.00 p.m. on 17.8.93. No such attempt was made by the petitioner to examine any witness. In view of the fact that the Inquiry Officer as well as the High Court in its recommendations came to the conclusion that the incident of 17.8.93 as narrated by Shri Jani has been proved, with which finding we find ourselves in complete agreement, the petitioner's total denial of the incident and her unwillingness or inability to explain Shri Gajjar entering her chamber on two occasions and spending considerable time inside her chamber would, in our view, be extremely damaging. Shri Gajjar's entry in her chamber on 17.8.93 on two occasions would assume further significance in view of the fact that Shri Jani's case was earlier fixed on 13.8.93 and thereafter adjourned to 20th August 1993 and that there was no other case of Shri Gajjar on the board before the petitioner and that, therefore, Shri Gajjar had absolutely no occasion to meet

the petitioner twice inside her chamber on 17.8.93.

54. Learned advocate for the petitioner is correct when he states that Shri Jani has not heard the petitioner demanding bribe and it is only that Shri Gajjar had told him so. We, however, cannot accept the contention of the learned advocate for the petitioner that even if the entire version of Shri Jani is to be believed, there is no case made out against the petitioner of having demanded illegal gratification. If it was only a case where Shri Gajjar had demanded money from Shri Jani purportedly at the instance of the petitioner, that by itself may not have been sufficient to link the petitioner with the felony. In the present case, however, there are large number of other circumstances which support the case against the petitioner. As discussed earlier, there is evidence of Shri Jani to establish that Shri Gajjar had entered the chamber of the petitioner on two occasions on 17.8.93 (being the date on which the case was not listed on Board), spent considerable time inside the chamber and had demanded Rs.20,000/- from Shri Jani on behalf of the petitioner for deciding the case in his favour. In that view of the matter and in view of no cross-examination of Shri Jani on this important aspect of the matter and also in view of the petitioner's inability to explain Shri Gajjar's presence in her chamber on 17.8.93 without any justification whatsoever and in view of the fact that Shri Gajjar also admitted to have demanded an amount of Rs.20,000/= from Shri Jani in the name of the petitioner, albeit, for advocate Shri Pancholi and himself, we find that the conclusions arrived at during the course of the inquiry that the petitioner had in fact demanded the said amount from Shri Jani through advocate Shri Gajjar, are based on substantial evidence on record. By the very nature of the allegations, it would be virtually impossible to have direct proof of such incidents. In fact, Shri Gajjar had made it clear to Shri Jani that the money shall have to be paid to him and the same would not be received by the petitioner directly from Shri Jani. The findings arrived at on the basis of the inference drawn by the Inquiry Officer as well as the High Court in its recommendations being based on proved facts, cannot be characterised as perverse.

55. In view of the above discussion, we find that there is substantial material on record to drive home the charge article 1 against the petitioner. The findings arrived at by the Inquiry Officer as accepted by the High Court in its recommendations cannot be characterised as perverse or such as no prudent person would ever arrive

at. Certain minor discrepancies notwithstanding, which are bound to creep in on account of some passage of time in recording different statements at different stages and on account of number of persons giving their statements during the course of inquiry, we find that there is sufficient material on record to support the findings arrived at during the course of inquiry. None of the discrepancies would shake the foundation of the findings. We have noted that the Inquiry Officer has not believed the say of Shri Jani when he suggested that he could hear the conversation between the petitioner and Shri Gajjar when he was standing outside the chamber of the petitioner on 17.8.93. The Inquiry Officer has also discarded the possibility of the petitioner having threatened Shri Jani. This, however, by itself would not be sufficient for us to hold that the findings of the Inquiry officer and that of the High Court in its recommendations were based on no evidence. We find that the High Court in its recommendations has taken into account all relevant aspects of the matter. We have extensively reproduced portions of the said recommendations. The reasoning therein cannot be faulted. As discussed earlier, this being a case of departmental inquiry where the level of proof required is that of preponderance of probability and not that of proof beyond reasonable doubt as in a criminal trial we find that there was ample justification for coming to the conclusion that the charge of having demanded illegal gratification was proved against the petitioner.

56. As regards charge article 2 also, we find that a person known as 'Mama' used to bring her to the court on his scooter frequently and used to spend considerable time inside her chamber and loiter around in the court compound. May not be by itself illegal, but the conduct of the petitioner is highly objectionable. It would not befit a judicial officer to permit any person, even if he happens to be a relative, to sit in her chamber on number of occasions and not to discourage his loitering around the court compound. As discussed in the earlier portion of the judgment, there was evidence on record to establish the said charge and we find no reason to disturb these findings. The Inquiry Officer has not believed the allegation of said Mama collecting money on behalf of the petitioner want of any evidence.

57. In the result, we conclude that the petitioner has not made out any case for interference with the impugned orders in exercise of powers under Article 226 of the Constitution of India.

58. Before we part with the case, we would like to record a curious development which came to our notice quite accidentally. Shri Jani in his statement at one place had stated that his case before the petitioner was fixed on 13.8.93 and thereafter adjourned to 20th August 1993 and on 20th August 1993, it was adjourned to 28th August 1993. We, therefore, to verify the dates, called for the calendar of the year 1993. The calendar of 1993 showed that August 28 was a 4th Saturday and therefore a non-working day for the Court. This, therefore, led us to call for the record of the criminal case which we were told is still pending before the criminal court. Learned advocate Shri Pardiwala had immediately made the said record available to us. On going through the original case files of CBI Case No.5/91, we find that the case was on board on 13.8.93 and thereafter adjourned to 20th August, 1993. The petitioner who was present in the Court was also shown her Board of 20th August 1993 and had admitted that the date of adjournment of 20th August 1993 next to the column where this case was listed was written by her in her hand-writing. The board of 20th August 1993 was a typed board which did not include CBI Case No.5/91. But this case along with a few other matters was added by hand in the board of 20th August, 1993 and shown as adjourned to 2.9.93. We perused the rozkam of CBI Case No.5/91 and we find that there was no rozkam written of 13.8.93, 20.8.93 and 2.9.93. We also find that the size of the paper on which the rozkam for the dates prior to 13.8.93 was different from the size of preceding and succeeding papers. Discolouration of this page also seen different from other pages and therefore raise suspicion. We are told that the Vigilance Department of the High Court had seized the entire record of this case on 4.9.93. We also find that the petitioner was actively discharging her duties on the said post upto 25.11.93 before she was transferred to Bhuj. It will be for the Court deciding the said case to examine these aspects and take such action as may be warranted in accordance with law.

59. In conclusion, we find that the petition is devoid of any merit and deserves to be dismissed and is hereby dismissed. Rule is discharged with no order as to costs.

(R.K.Abichandani, J.)

(Akil Kureshi, J.)
(vjn)